

ENERGY AND ENVIRONMENT CABINET

Department for Environmental Protection

Division of Water

(Amendment)

401 KAR 8:010. Definitions for 401 KAR Chapter 8.

RELATES TO: KRS 223.160-223.220, 224.10-100, 224.10-110, 40 C.F.R. 141.2, EO 2008-507, 2008-531

STATUTORY AUTHORITY: KRS 223.160-223.220, 224.10-100(28), 224.10-110, 40 C.F.R. 141.2

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(28) and 224.10-110(2) authorize the cabinet to promulgate administrative regulations for the regulation and control of the purification of water for public and semipublic use. EO 2008-507 and 2008-531, effective [~~Effective~~] June 16, 2008, abolish the Environmental and Public Protection Cabinet and establish the new Energy and Environment Cabinet. This administrative regulation establishes the definitions for terms used by the cabinet in 401 KAR Chapter 8.

Section 1. Definitions. Except as provided in this section, the definitions established in 40 C.F.R. 141.2 shall apply.

(1) "Board" means the Kentucky Board of Certification of Water Treatment Plant and Water Distribution System Operators.

(2) "Boil water advisory" means a type of consumer advisory that provides notice to the consuming public through radio, television, direct mail, electronic mail, posting, newspaper or

other media and that conveys in the quickest and most effective manner possible:

(a) Information that water provided by a system may cause adverse human health effects due to possible biological contamination if consumed, unless it is first boiled for three (3) minutes at a rolling boil; and

(b) What action the public is advised to take.

(3) "Bottled water" means water that is:

(a) From an approved bottled water treatment plant;

(b) Placed in a sealed container or package; and

(c) Offered for human consumption or other consumer uses.

(4) "Bottled water system" means a public water system that provides bottled drinking water and includes the sources of water, and treatment, storage, bottling, manufacturing, or distribution facilities. The term excludes:

(a) A public water system that provides only a source of water supply for a bottled water system; and

(b) An entity providing only transportation, distribution or sale of bottled water in sealed bottles or other sealed containers.

(5) "Bottled water treatment plant" means a facility that provides the product water used for bottled water by processing water from an approved source.

(6) "Bypass" means a physical arrangement whereby water may be diverted around any feature of the purification process of a public or semipublic water supply.

(7) "Certificate" means a certificate of competency issued by the cabinet stating that the operator has met all requirements for the specified operator classification as established by 401 KAR Chapter 8.

(8) "Certified laboratory" means a laboratory where the physical, instrumental, procedural, and personnel capabilities have been approved by the U.S. Environmental Protection Agency or the cabinet and that is certified for one (1) or more types of the contaminants listed or for one (1) or more of the specific constituents or combinations of constituents listed in 401 KAR Chapter 8.

(9) "Certified operator" means an individual who holds an active certificate.

(10) "Community water system" is defined by 40 C.F.R. 141.2 [~~effective July 1, 2007~~].

(11) ~~[(10)]~~ "Consumer advisory" means a notice to the consuming public through radio, television, direct mail, electronic mail, posting, newspaper, or other media to convey in the quickest and most effective manner possible:

(a) Information that water provided by a system may cause adverse human health effects if consumed and what action the public is advised to take; or

(b) Other information that the public needs to know about its water.

~~[(11)] "Contaminant" is defined by 40 C.F.R. 141.2[~~effective July 1, 2007~~.~~

(12) "Contaminant group" means all of the constituent members that collectively comprise the individual bacteriological, inorganic chemical, organic chemical, radiological, volatile organic chemical, synthetic organic chemical, and secondary contaminant groups regulated by 401 KAR Chapter 8.

(13) "Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

(14) "Cross connection" means a physical connection or arrangement between two (2) otherwise separate systems, one (1) of which contains potable water and the other being either water of unknown or questionable safety, or steam, gas, or chemicals, whereby there may be flow from one (1) system to the other, the direction of flow depending on the pressure

differential between the two (2) systems.

~~(15) ["Direct filtration" is defined by 40 C.F.R. 141.2, effective July 1, 2007.~~

~~(16)] "Direct responsible charge" means personal, first hand responsibility to conduct or actively oversee and direct procedures and practices necessary to ensure that the drinking water treatment plant or distribution system is operated in accordance with accepted practices and with KRS 223 and 401 KAR Chapter 8 and 11. [control or supervision of the operation of a public water system.]~~

~~(17) "Disinfectant" is defined by 40 C.F.R. 141.2, effective July 1, 2007.~~

~~(18) "Disinfection" is defined by 40 C.F.R. 141.2, effective July 1, 2007.~~

~~(19) "Filtration" is defined by 40 C.F.R. 141.2, effective July 1, 2007.~~

~~(20)] (16) "Groundwater source" means a source of water for a public or semipublic water supply that does not have a free water surface exposed to the atmosphere or contain 10,000 mg/L or more total dissolved solids, and is not under the direct influence of surface water.~~

~~[(21) "Groundwater under the direct influence of surface water" is defined by 40 C.F.R. 141.2, effective July 1, 2007.~~

~~(22) "Maximum contaminant level" or "MCL" is defined by 40 C.F.R. 141.2, effective July 1, 2007.~~

~~(23)] (17) "Mineral water" means bottled water that contains not less than 250 parts per million total dissolved solids.~~

~~[(24) "Noncommunity water system" is defined by 40 C.F.R. 141.2, effective July 1, 2007.~~

~~(25)] (18) "NTU" means nephelometric turbidity unit.~~

~~(19) [(26)] "Operator" means a person involved in the operation of a drinking water treatment plant or distribution system. ~~[who has on-site responsibility and authority to conduct the~~~~

1 ~~procedures and practices necessary to ensure that the water supply system or a portion thereof is~~
2 ~~operated in accordance with the laws and administrative regulations of the commonwealth, or to~~
3 ~~supervise others in conducting the procedures and practices. Maintenance personnel and others~~
4 ~~who do not participate directly in the production or distribution of potable water are not included~~
5 ~~in the term "operator".~~

6 ~~(27) "Performance evaluation sample" is defined by 40 C.F.R. 141.2, effective July 1, 2007].~~

7 ~~(28)]~~ (20) "Private water supply" means a residual water supply located on private property
8 for the use of one (1) to three (3) residential households.

9 (21) ~~(29)]~~ "Product water" means the water processed by a bottled water treatment plant that
10 is used for bottled drinking water.

11 (22) ~~(30)]~~ "Professional engineer" means an engineer who is licensed as a professional
12 engineer in Kentucky, pursuant to KRS Chapter 322.

13 ~~[(31) "Public water system" is defined by 40 C.F.R. 141.2, effective July 1, 2007.~~

14 ~~(32)]~~ (23) "Secondary contaminants" means contaminants that do not, in general, have a
15 direct impact on the health of consumers but whose presence in excessive quantities may
16 discourage the utilization of drinking water and discredit the supplier.

17 (24) ~~(33)]~~ "Secondary standards" means the maximum contaminant levels for secondary
18 contaminants.

19 (25) ~~(34)]~~ "Semipublic water system" means a water system made available for drinking or
20 domestic use that does not qualify as a private or public water system.

21 (26) ~~(35)]~~ "Supplier of water" means a person who owns or operates a public water system.

22 (27) ~~(36)]~~ "Surface water" means water that is open to the atmosphere and subject to surface
23 runoff, or groundwater under the direct influence of surface water.

1 ~~(28)~~ [(37)] "Surface water source" means ponds, reservoirs, streams of all sizes, free-flowing
2 springs, a source of water supply for a public water system that has a free water surface exposed
3 to the atmosphere, or groundwater under the direct influence of surface water.

4 ~~(29)~~ [(38)] "System" means a public water system.

5 ~~[(39)] "Transient noncommunity water system" is defined by 40 C.F.R. 141.2, effective July~~
6 ~~1, 2007.~~

7 ~~(40)~~ (30) "Turbidity" means the presence of suspended particulates, including sand, silt,
8 clay, finely divided organic or inorganic matter, plankton or other microscopic organisms or
9 elements that optically interfere with the clarity of liquids.

10 ~~[(41)] "Uncovered finished water storage facility" is defined by 40 C.F.R. 141.2[, effective~~
11 ~~July 1, 2007.~~

12 ~~(42) "Virus" is defined by 40 C.F.R. 141.2[, effective July 1, 2007.~~

13 ~~(43)~~ (31) "Water distribution system" means the portion of the public water [~~supply~~] system
14 in which water is conveyed from the water treatment plant or other supply point to the premises
15 of a consumer, or a system of piping and ancillary equipment which is owned and operated by an
16 established water system independent of the water supply system from that potable water is
17 purchased.

18 (32) ~~[(44)]~~ "Water supply system" means the source of supply and all structures and
19 appurtenances used for the collection, treatment, storage, and distribution of water for a public or
20 semipublic water system [~~supply~~].

21 (33) ~~[(45)]~~ "Water treatment plant" or "purification plant" means that portion of the water
22 supply system that is designated to alter the physical, chemical, or bacteriological quality of the
23 water prior to entry to the water distribution system.

401 KAR 8:010 “Definitions for 401 KAR Chapter 8.” approved for promulgation:

Date

Henry “Hank” List, Deputy Secretary, FOR
Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 23, 2009 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks Lane, Conference Room 301D, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by June 16, 2009, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until June 30, 2009. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Abigail Powell, Regulations Coordinator
Division of Water
200 Fair Oaks Lane
Frankfort, KY 40601
Telephone: (502) 564-3410 Fax (502) 564-0111
Email: Abigail.Powell@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 401 KAR 8:010

Contact Person: Peter T. Goodmann, Assistant Director

(1) Provide a brief summary of:

- (a) What this administrative regulation does:** This administrative regulation provides definitions for 401 KAR Chapter 8.
- (b) The necessity of this administrative regulation:** Definitions clarify for the regulated community certain terminology that is not defined in the dictionary.
- (c) How this administrative regulation conforms to the content of the authorizing statutes:** KRS 224.10-110 authorizes the cabinet to regulate public and semipublic water systems.
- (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:** This administrative regulation provides definitions for 401 KAR Chapter 8 to clarify terms for the regulated community that are not defined in the dictionary.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

- (a) How the amendment will change this existing administrative regulation:** This administrative regulation is being amended to add a citation to the relevant federal definition regulation, 40 CFR 141.2.
- (b) The necessity of the amendment to this administrative regulation:** In order to obtain primacy from EPA, the cabinet must incorporate the relevant federal definitions regulation.
- (c) How the amendment conforms to the content of the authorizing statutes:** KRS 224.10-110 authorizes the cabinet to regulate public and semipublic water systems. 401 KAR Chapter 8 are public and semipublic water system regulations. This administrative regulation provides definitions for 401 KAR Chapter 8.
- (d) How the amendment will assist in the effective administration of the statutes:** This administrative regulation contains definitions for 401 KAR Chapter 8.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects 491 public, 50 semipublic, and 7 bottled water systems.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:** This administrative regulation contains definitions; there are no substantive requirements.
- (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):** There will be no cost to regulated entities as a results of complying with this administrative regulation. This administrative regulation contains definitions.
- (c) As a result of compliance, what benefits will accrue to the entities identified in question**

(3): Affected entities will be able to better understand the terms used throughout 401 KAR Chapter 8.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There will be no additional cost to the administrative body.

(b) On a continuing basis: There will be no additional cost to the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? The Division of Water uses federal funds to administer the provisions of the federal Safe Drinking Water Act.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:
No increase in fees or funding will be necessary as a result of this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish fees or directly or indirectly increase fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

No. This regulation contains definitions that do not require tiering.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation #: 401 KAR 8:010

Contact Person: Peter T. Goodmann, Assistant Director

- 1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?**

Yes X No

If yes, complete questions 2-4.

- 2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?**

This administrative regulation applies to public and semipublic water systems. Public water systems are often owned by city governments or organized under county governments. Other districts may, in some cases, have a water system.

- 3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.**

KRS 224.10-110 and 40 C.F.R. 141.2

- 4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not generate any costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not generate any costs.

(e)

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation#: 401 KAR 8:010

Contact Person: Peter T. Goodmann, Assistant Director

1. Federal statute or regulation constituting the federal mandate.

40 C.F.R. 141.2

2. State compliance standards.

KRS 223.160-223.220, 224.10-100(28), 224.10-110

3. Minimum or uniform standards contained in the federal mandate.

40 C.F.R. 141.2 contains federal definitions for 40 C.F.R. 141.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate?

Although there are definitions in this administrative regulation that are based on state regulatory terms, the definitions do not, by themselves, impose stricter standards or additional or different responsibilities or requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

There are additional definitions in this administrative regulation that are used in the state regulation that do not have federal counterparts.